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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,061	09/19/2003	Luc Lemmens	1316N-001687	5489
27572	7590	10/06/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			WILLIAMS, THOMAS J	
			ART UNIT	PAPER NUMBER
			3683	
DATE MAILED: 10/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,061

Applicant(s)

LEMMENS ET AL.

Examiner

Thomas J. Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7,10,12-14,16,19,21-23,25,28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7,10,12-14,16,19,21-23,25,28 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Handwritten signature/initials.

DETAILED ACTION

1. Acknowledgment is made in the receipt of the amendment filed August 5, 2005.
2. The terminal disclaimer filed August 5, 2005 has been deemed not proper. The terminal disclaimer identifies the proper patent. However, a typographical error in the Office action identifies the wrong patent number. Therefore, the terminal disclaimer does not match the patent number listed in the rejection. The double patenting rejection has been corrected in this action. It is recommended that the applicant refile the terminal disclaimer.

Claim Objections

3. Claims 1, 10 and 19 are objected to because of the following informalities: the phrase “said piston *is* a specified direction.” should be changed to read “said piston *in* a specified direction.”. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 29 is rejected under 35 U.S.C. 102(b) as being anticipated by US 3,391,922 to Axthammer.

Axthammer discloses a suspension system, comprising: a frequency dependent damper 2 defines a first pressurized working chamber 16/18; an air spring assembly 5 defines a second pressurizing working chamber 17; a booster 1 enables pressure communication between the first pressurized working chamber and the second pressurized working chamber, the booster comprises: a housing 1 that defines a third pressuring working chamber 14'/14” that is separate

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from the first and second pressurizing working chamber; a piston 14 is disposed in the third pressurizing working chamber.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1, 7, 10, 16, 19, 25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Axthammer in view of DE 35 28 830 to Goennheimer et al.

Re-claims 1, 10 and 19, Axthammer teaches a suspension system and vehicle, comprising: an sprung component; an unsprung component; a frequency dependent damper 2 defines a first pressurized working chamber 16/18; an air spring assembly 5 defines a second pressurizing working chamber 17; a booster 1 enables pressure communication between the first pressurized working chamber and the second pressurized working chamber, the booster comprises: a housing 1 that defines a third pressuring working chamber 14'/14" that is separate

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from the first and second pressurizing working chamber; a piston 14 is disposed in the third pressurizing working chamber. However, Axthammer fails to teach a resilient member disposed between the piston assembly and the housing for biasing the piston in a specified direction.

Goennheimer et al. teach a booster 64 used in a suspension system that is provided with a spring for biasing a piston in a specified direction. It would have been obvious to one of ordinary skill in the art to have provided the assembly of Axthammer with a spring biasing the piston in a specified direction as taught by Goennheimer et al., thus providing a means of biasing the piston to a normal condition.

Re-claims 7, 16 and 25, duct 19 in Axthammer is interpreted as a restrictor.

Re-claim 28, see figure 1 in Axthammer.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1, 3-5, 7, 10, 12-14, 16, 19, 21-23, 25, 28 and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,814,347 to Lemmons et al. in view of US 2,774,446 to Bourcier de Carbon or DE 35 28 830 to Goennheimer et al. Lemmons et al. fail to teach the working chamber 70

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having a resilient member that effects booster performance. Bourcier de Carbon and Goennheimer et al. each teach the use of a spring in a working chamber (or booster) for biasing a piston element. It would have been obvious to one of ordinary skill in the art to have provided the working chamber of Lemmons et al. with a biasing element, such a spring as taught by Bourcier de Carbon or Goennheimer et al., thus providing a means of biasing the piston to a normal condition.

Response to Arguments

11. Applicant's arguments filed August 5, 2005 have been fully considered but they are not persuasive. With regards to Axthammer, piston 14 is interpreted by the examiner as being disposed within the third pressurizing chamber, which is defined by housing 1 and best illustrated as chambers 14' and 14". It is unclear to the examiner why duct 19 is considered by the applicant to define a third pressurizing chamber. Duct 19 is interpreted as being the restrictor disposed between the air spring assembly and the booster.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. Any inquiries concerning this communication or earlier communications from the examiner should be directed to Thomas Williams whose telephone number is 571-272-7128. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, can be reached at 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-6584.

TJW

September 30, 2005

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SEP 30 2005
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Thomas Williams
AV 3683
9-30-05